

**SEP 26 2005****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****GEORGE LUSTER,****Plaintiff - Appellant,****v.****JAMES M. SCHOMIG, Warden; et al.,****Defendants - Appellees.****No. 04-16204****D.C. No. CV-04-00281-LRH****MEMORANDUM\***

**Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding**

**Submitted September 12, 2005\*\***

**Before: REINHARDT, RYMER, and HAWKINS, Circuit Judges.**

George Luster, a Nevada state prisoner, appeals pro se the district court's dismissal pursuant to 28 U.S.C. § 1915A(b) of his 42 U.S.C. § 1983 action for failure to exhaust administrative remedies. We have jurisdiction under 28 U.S.C. §

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1291. We review a district court's determination that a prisoner failed to exhaust administrative remedies de novo, and review factual determinations for clear error. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We reverse and remand.

The Prison Litigation Reform Act requires a prisoner to exhaust "such administrative remedies as are available" before filing a federal action. *See* 42 U.S.C. § 1997e(a). Because Luster's complaint alleges that he could not proceed to the first formal appeal level because prison officials deliberately made the required grievance forms unavailable to him, we can not say that Luster failed to exhaust his available administrative remedies. *See Wyatt*, 315 F.3d at 1119. We therefore remand to the district court for consideration of the merits of Luster's 42 U.S.C. § 1983 claim.

**REVERSED and REMANDED.**